Apex Tankers Co.¹ and Radio Officers Union of the United Telegraph Workers, AFL-CIO, Petitioner. Case 15-RC-6683

August 12, 1981

DECISION ON REVIEW

On October 8, 1980, the Acting Regional Director for Region 15 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of the Employer's two radio officers. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's decision on the ground that he departed from officially reported precedent.

By telegraphic order dated November 12, 1980, the request for review was granted² and the election, which had not as yet been scheduled, was postponed pending decision on review. The Employer and Petitioner filed briefs on review.

The Board has considered the record in this case, including the briefs on review, and makes the following findings:

The Employer is engaged in the operation of a vessel used to transport petroleum products to various States and territories of the United States. On September 11, 1980, the Acting Regional Director granted a motion to intervene filed by Apex Tanker Officers Association based on a collective-bargaining agreement between the Association and the Employer. By the terms of the agreement, the Association is recognized as the exclusive bargaining representative for licensed officers employed aboard the Employer's vessel, including the radio officers sought by the Petitioner.

The Acting Regional Director reversed, sua sponte, the order granting the motion to intervene based on his findings that supervisors play a crucial role in the internal affairs of the Association and that there is a clear and present danger of a conflict of interest that would interfere with the collective-bargaining process, citing Sierra Vista Hospital, Inc., supra. In this regard, the Acting Regional Director found that 3 of the approximately 12 licensed officers represented by the Association are supervisors, and that 2 of these—the master and chief mate—were instrumental in negotiating the agreement and were signatories on behalf of the Association. He also found that the master, who is

in charge of labor relations aboard the Employer's vessel and has final authority for all hiring, firing, and disciplinary actions, was later instrumental in modifying the agreement.

The Acting Regional Director found further that the agreement between the Employer and the Association was not a bar to the petition, on grounds it did not contain sufficient terms and conditions of employment to stabilize the bargaining relationship.³ We agree that the contract is not a bar, but on a different ground.

The Board's contract-bar rules were designed to promote stability in collective-bargaining relationships. Since the record supports, and we adopt, the Acting Regional Director's finding that the Intervenor is disqualified from representing the Employer's employees because of a conflict of interest, it would be anomalous to hold, nonetheless, that Intervenor's collective-bargaining agreement bars an attempt by another qualified labor organization to represent these employees. As indicated, the very agreement alleged as a bar was executed on behalf of Intervenor by two of Employer's highest ranking supervisors.

The Employer cites C. G. Willis, Inc., 119 NLRB 1677 (1958), in which the Board found a contract a bar even though it purported to cover several supervisors. The instant case is clearly distinguishable in that here, not only were supervisors covered by the contract, but they were actual signatories to it and their active participation in securing the contract led to the finding that Intervenor had a disqualifying conflict of interest. We find more apt the analogy, suggested by Petitioner, to cases involving unions found to be defunct. The contract of a union found to be defunct cannot serve as a bar. Hershey Chocolate Corporation, 121 NLRB 901, 911 (1958). Although there is no evidence or contention that Intervenor is defunct, its disabling conflict of interest renders it as legally incapable of serving as bargaining representative as a union found to be defunct. For the same reasons, its contract cannot serve as a bar.

The Board has been administratively advised that the Regional Director for Region 15 has already conducted the election and impounded the ballots. Accordingly, this case is remanded to the Regional Director for Region 15 for the purpose of opening and counting the ballots in the unit as specified herein.

¹ The name of the Employer appears as amended at the hearing.

² In the mailgram granting the request for review, the Board specifically invited the parties "to brief the issue as to whether bar quality should be given to a contract negotiated by a union which would be disqualified from bargaining under the Board's Sierra Vista rationale (241 NLRB 631 (1979))."

³ The Association's collective-bargaining agreement contains clauses pertaining to wages, benefits, probationary status, recognition, and union security, *inter alia*. However, in view of our finding of no bar for other reasons, we need not resolve this issue.

⁴ Appalachian Shale Products Co., 121 NLRB 1160, 1163 (1958).